

The Examiner refused registration, taking the position Applicant's mark (in class 9 only) is likely to be confused with existing U.S. Registration No. 2,240,445 SSC for "computer software for communications over existing power lines and over rf links within buildings and vehicles" (owned by Qualcomm Corp. of San Jose, CA), and U.S. Registration No. 3,365,819 SSC (AND DESIGN) for electric current switches and electrical controllers (owned by Peloton Mfg. Co. of Mentor, Ohio).

Applicant's composite mark which is the subject of the application includes the letters SSC with a distinctive design of an abstract human figure. Of note, Peloton's registered mark includes a distinctive design of the letters sSc, with the S in the middle being about double the size of the other two letters.

Further, the Examiner provided notice of a potential refusal (presumably as to Applicant's class 37 services), of a potential refusal in view of earlier-filed application serial no. 85/134,986 SSC (AND DESIGN) for recycling, garbage collection, junk, trash and debris removal (owned by Sanitary Service Co. of Bellingham, Washington). Applicant believes the refusal and potential refusal is misplaced and should be withdrawn.

Applicant Swedish Space Corporation (SSC Group) provides technology and services required to implement and manage space programs worldwide, including satellite subsystems, launch and operation services. See, www.sscspace.se/ SSC was founded in 1972 and thus has been in business for nearly 40 years. Id. It has developed 8 scientific satellites, more than 60 rocket vehicles, 60 scientific payloads, launched 500 rockets, launched 550 balloons, communicated with over 100 satellites, and developed and installed 60 maritime surveillance systems in 14 countries. Id. SSC's revenue in 2010 was over \$135 million. Id.

SSC customers include large governmental organizations such as the European Space Agency, Swedish National Space Board, and large corporations worldwide. Id. SSC is headquartered in Stockholm, Sweden and has offices in China and Thailand, and subsidiary offices in various countries including the U.S. Id. All of SSC's goods and services are sold to professional buyers through written contracts in the many thousands of dollars for each such transaction.

Applicant's goods in class 9, as amended and clarified, are satellites, navigation devices, apparatus for measuring electrical consumption, computer programs for airborne maritime surveillance and apparatus for same, telecommunications devices and systems, simulators for driving or control of vehicles.

Qualcomm's class 9 goods are "computer software for communications over existing power lines and over rf links within buildings and vehicles," totally different than the goods of Applicant. Applicant's software is for airborne maritime surveillance, totally different.

Peloton Mfg. Co.'s class 9 goods are electric current switches and controllers. Applicant does not sell individual electric current switches and electrical controllers, except as part of much larger, complex assemblies.

Sanitary's services pertain to garbage collection and recycling. Applicant does vehicle and craft maintenance, the upkeep of sophisticated equipment, totally different from collecting and sorting through trash to extract bottles, cans, paper and cardboard.

Likelihood of confusion is synonymous with *probable* confusion; it is not enough that confusion is merely possible. August Storck K.G. v. Nabisco Inc., 59 F.3d 616 (7th Cir. 1995) (prelim. Injunction reversed). *An appreciable or substantial number* of buyers must be likely to be confused. Streetwise Maps Inc. v. Van Dam, Inc., 159 F.3d 739 (2d Cir. 1998) ("A probability of confusion may be found when a large number of purchasers likely will be confused as to the source of the goods in question.").

Applicant's and Peloton's composite marks give off very different commercial impressions. If composite marks are distinctly dissimilar in overall appearance, confusion is unlikely, even if used for competing products. In re TSI Brands Inc., 67 USPQ2d 1657 (TTAB 2002) (AK for clothing unlikely to be confused with AK (American Khakis) for sportswear) (see images below).



Even identical marks when used on non-competitive goods/services are often found not confusingly similar: NASA v. Record Chem. Co., 185 USPQ 563 (TTAB 1975) (Apollo 8 for space mission not likely to be confused with APOLLO 8 for mothproofing product); HBP Inc. v. American Marine Holdings Inc., 290 F. Supp. 2d 1320 (M.D. FL 2003) (DAYTONA for auto races not likely to be confused with DAYTONA for expensive power boats); J.C. Penney Co. v. Arctic Enterprises Inc., 375 F. Supp. 913 (D. Minn. 1974) (EL TIGRE for tires not likely to be confused with EL TIGRE for snowmobiles); Fed. Tel. & Radio Corp. v. Fed. TV Corp., 180 F.2d 250 (CCPA 1976) (FEDERAL for radio supplies not likely to be confused with FEDERAL for television sets); Riva Boats Int'l v. Yamaha Motor Corp., 223 USPQ 183 (C.D. Cal. 1983) (RIVA for luxury power boats not likely to be confused with RIVA for motor scooters); Savin Corp. v. Savin Group, 68 USPQ2d 1893 (S.D. N.Y. 2003), *aff'd* 391 F.3d 439 (2d Cir. 204) (SAVIN for electronic equipment not likely to be confused with SAVIN for professional engineering services). Applicant's goods and services as compared to those in the cited registrations/application differ substantially, similar to the facts in the cases above where no likelihood-of-confusion was found.

In assessing likelihood-of-confusion, the elevated standard of the discriminating purchaser applies here. Weiss Assoc. Inc. v. HRL Assoc. Inc., 902 F.2d 1546 (Fed. Cir. 1990) ("In making purchasing decisions regarding expensive goods [or services], the reasonably prudent person standard is elevated to the standard of the discriminating purchaser.").

Confusion is also less likely when the relevant buyer class is composed of professionals, or commercial purchasers. CMM Cable Rep. v. Ocean Coast Props. Inc. 888 F. Supp. 192 (D. Me. 1995), aff'd 97 F.3d 1504 (1st Cir. 1996)(sophisticated professional buyers less likely to be confused than ordinary consumers of inexpensive items). Applicant's products, and upon information and belief those of registrant Qualcomm, are expensive and sold to professional buyers.

Additionally, according to the PTO's records Applicant and the cited registrants and earlier-filed Applicant have all been using SSC marks concurrently for at least ten (10) years. Applicant is unaware of even a single instance of actual confusion with any of them. Brookfield Comms. Inc. v. West Coast Ent. Corp. 174 F.3d 1036, 1050 (9th Cir. 1999)("We cannot think of more persuasive evidence that there is no likelihood of confusion between these two marks than the fact that they have been simultaneously used for five years without causing any consumers to be confused as to who makes what.").

All these factors weigh strongly in favor of no likelihood-of-confusion between Applicant's mark and the cited registrations and earlier-filed application. Applicant request that the refusals to register be withdrawn and a notice of allowance issue. Please direct any questions or comments to the undersigned.

Respectfully submitted,

LAUSON & TARVER LLP

Robert J. Lauson